

AGP-55. LIMITATION OF LIABILITY - HIGH-VALUE ITEMS

- (a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this Contract, the Contractor shall not be liable for loss of or damage to property of the Institute or the Government (including the supplies delivered under this Contract) that:
 - (1) Occurs after JPL acceptance of the supplies delivered under this Contract; and
 - (2) Results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or JPL's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this Article, means the Contractor's directors, officers and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the Contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this Contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this Contract, the Contractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after JPL acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this Contract.
- (d)
 - (1) This Article does not diminish the Contractor's obligations, to the extent that they arise otherwise under this Contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this Contract.
 - (2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by JPL, the Contractor shall, as determined by JPL:
 - (A) Pay the Institute the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred; or
 - (B) Provide other equitable relief.
- (e) This Article shall not limit or otherwise affect the Institute's or the Government's rights under Articles, if included in this Contract, that cover:
 - (1) Warranty of technical data;
 - (2) Ground and flight risks or aircraft flight risks; or
 - (3) Government property.
- (f) In each subcontract, except a subcontract covered by paragraph (g) below, the Contractor shall insert the appropriate Article, supplemented as necessary to reflect the relationship of the contracting parties, as follows:
 - (1) In subcontracts for high-value items only, after obtaining JPL's advance written approval, insert this Article, including this paragraph (f).
 - (2) In subcontracts for other end items only, insert the clause at FAR subsection 52.246-23, Limitation of Liability.

(g) In any subcontract for both high-value items for which this Article is appropriate, and other end items for which the clause at FAR subsection 52.246-23, and any corresponding implementing or supplementing provisions in the NFS, is appropriate, after obtaining the JPL's advance written approval to use this Article, the Contractor shall:

(1) Include both this Article and the FAR clause;

(2) Identify high-value items by line item; and

(3) Insert the following preamble before paragraph (a) of this Article as used in that subcontract:

"(This Article shall apply only to those items identified in this Contract as being subject to this Article.)"